IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 267 of 1992.

Reserved on: 9. 8. 2007.
Date of decision: 21 .8. 2007.

State of Himachal Pradesh. Appellant.

Versus

Raj Kumar and another. Respondents.

Coram

Hon'ble Mr. Justice Surjit Singh, J.
Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]? Yes.

For the appellant : Mr. Som Dutt Vasudeva, Additional Advocate General with Mr. D.S. Nainta, Deputy Advocate General.

For the respondent: : Mr. Rajnish Maniktala, Advocate.

Per Surinder Singh, J.

The instant appeal has been directed by the State, feeling aggrieved and dis-satisfied with the judgment of acquittal passed by learned Sessions Judge under Section 376 and 451 of the Indian Penal Code in Sessions Trial No. 3 of 1991 decided on 25-11-1991.

The factual matrix of the case, is that an FIR Exhibit PW7/A was registered by the prosecutrix on 11.4.1988 in Police Station, Jawalamukhi alleging that :

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[1] Whether reporters of the Local papers are allowed to see the judgment? Yes.

" on 10.4.1988, her mother accompanied by her sister Krishna, Kanta brother Shonki were away to "Kalu-di-Bedh" to attend satsang. Her father Roshan Lal had taken the cattle to the water source and her elder brother Raj Kumar was away in the field harvesting the crop. At about 11.00 a.m., on the same day, finding the prosecutrix sitting alone, the respondent Raj Kumar who was Gram Sewak, entered inside the room and another respondent Darshan Kumar, tailor-master, a local resident, remained out side and bolted the door from out-side. Raj Kumar accused forcibly lifted the prosecutrix and laid her on the cot, threatened and opened her salwar, put off his pant, opened the underwear, when she tried to raise alarm, he gagged her mouth and committed rape for about ten minutes. Her private parts started bleeding. During the course of the said act, Raj Kumar is alleged to have injured her nipples with teeth bite leaving an abrasion thereon. After completing the act, he put on his clothes, in the meantime, her brother Raju (PW13) returned from the fields and opened the door. The respondent Raj Kumar ran away and jumped from the verandah. He was caught by her brother and

raised alarm. Uttam Chand Pradhan Chhaju and member Bhagwana came there, the accused pleaded to be pardoned. In the mean time, another Asha Ram of Gram Panchayat Kotla also came there and took the respondent Raj Kumar forcibly from that place along with his chappals which were left by him in the room. The prosecutrix alleged blood and semen stains on her salwar, which she handed over to the Police at a later date.

After recording the FIR, the Police got the prosecutrix medically examined from Dr. (Mrs.) Suman Sood and on her examination, the Doctor recorded the following observations in her Medico Legal Certificate Exhibit PW1/B:

"1. Person is conscious. Pulse 72/min. B.P. 110/70 mm. of hg. There are no external marks of injury on any parts of body .

2. Secondary sex characters-axillary hair, public hair well developed, Breasts well developed. Complained of pain left breast-no external mark of injury detected.

3. Menarche at the age of 15 years. M/H 2-3/30 days, regular, moderate painful.L.M.P.-20 days back.

4. Obsteretic history-unmarried.

5. P/V-vagina admits two fingers easily, utsoft, mobile, nps, Fx clear. Modulate bleeding per vagina.

6. Per speculum-bleeding P/V +. Cervix healthy. No laceration on cervix.

In the opinion of the Doctor, the prosecutrix is habituated to sexual intercourse. Her Medico Legal Certificate is Exhibit PW2/B.

The police visited the spot, prepared the site plan Exhibit PW16/A and recorded the statements of the witnesses. The respondent Raj Kumar was arrested on 16.4.1988 and the Police got him medically examined. His Medico legal certificate is Exhibit PW2/A. The Doctor found various injuries on his body including the injury on his ankle. There is also a reference in his M.L.C. that he was already examined by the said Doctor on his request and his report was handed over to one Shri Sat Pal of village Karlu Kotla on 11.4.1988. The salwar of the prosecutrix and underwear of the respondent Raj Kumar were also taken into possession and sent for chemical analysis but the report of the chemical analyst Exhibit PX shows neither the blood nor the semen stains on any of the exhibits aforesaid. After completing the investigation, challan was presented in the Court for trial for the above offences against both the respondents.

Charges were framed to which each of them pleaded not guilty and claimed trial. The prosecution examined its witnesses and the respondents were also examined under Section 313 of the Code of Criminal Procedure.

The defense of respondent as emerged from the trend of cross-examination and his statement, aforesaid, reveals that some money was due towards the brother of the prosecutrix for providing some timber to him. Timber was not provided by the brother of the prosecutrix, as such, the said respondent wanted his money back. Earlier, he had requested the brother of the prosecutrix to return his money but he indulged with him in hot exchange of words and on the day of the alleged incident, he went to the house of the father of the prosecutrix but there he was manhandled by the brother of the prosecutrix and gave him severe beatings and also caused grievous hurt to his ankle. He got himself medically examined and obtained the medical certificate Exhibit-D1. Next day, a false case was foisted against him and the other co-accused. According to him, he had helped the family of the prosecutrix in his capacity as Gram Sewak in many ways but the brother of the prosecutrix demanded amount and since his case was not recommended, therefore, a false case was planted.

Respondent Ramesh Chand has set up a defense that he had accompanied Raj Kumar aforesaid to the house of the father of the prosecutrix to get back his money. On reaching there, Raj Kumar respondent was manhandled and given beatings. He sought the help of the villagers to rescue Raj Kumar. Said Raj Kumar had sustained grievous injuries and further according to him, he was medically examined by the Doctor but the Police did not lodge its report.

The respondents were called upon to enter into their defense but no defense was led. As such, arguments were heard and the respondents were acquitted of the charges framed against them by the learned Sessions Judge on the ground that Dr. Sunman Sood (PW1) did not find any injury on the body of the prosecutrix as alleged. There were many contradictions, improvements in the statement of the prosecutrix and she also contradicted materially from her earliest version given in the F.I.R. The salwar did not contain any blood or semen stains and in view of this, her testimony did not inspire any confidence. Her age was proved to be nineteen years, i.e, the age of discretion. Thus, due to these infirmities, the case of the prosecution was dis-believed.

The State felt aggrieved by the impugned judgment of acquittal and assailed it by filing the present appeal taking the ground that the reliable evidence of the prosecution was rejected on flimsy grounds. The testimony of the prosecutrix inspires confidence and was corroborated on material particulars which was ignored without any cogent reason. Therefore, the judgment of acquitted was bad in law.

We have heard Shri Som Dutt Vasudeva, learned Additional Advocate General for the State who has vehemently argued that the statement of the prosecutrix inspires confidence and her sole testimony was sufficient to made basis to convict the respondent. He argued that the judgment of

acquittal is perverse, therefore prayed for acceptance of the appeal.

Contra, Shri Rajnish Maniktala, Advocate, while supporting the reasons recorded by the trial court for acquittal, has vehemently argued that neither the testimony of the prosecutrix inspires confidence nor it is supported by any of the direct or circumstantial evidence. The explanation given by the respondents is reasonable and has probablised the defense. Therefore, he submits that the appeal merits dismissal.

We have thoughtfully considered the rival contentions of the parties and have carefully scanned the evidence on record. We are aware of the fact that the testimony of a prosecutrix can be acted upon without corroboration on material particulars. While appreciating the evidence of the prosecutrix, the Court may also look for some assurance to satisfy its judicial conscience but there is no requirement of law to insist upon her statement to base the conviction of the accused. Further, the corroborative evidence is also not an inspiration in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. The inferences have to be drawn from the given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule is introduced through a new form of testimonial tyranny

making justice a casualty. However, courts not claim to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable (Please see: State of Punjab vs Gurmit Singh AIR 1996 Supreme Court 1393 and State of H.P. vs Shree Kant Shekari (2004) 8, SCC 153 and State of H.P. vs. Lekh Raj and another (2001) 1 Supreme Court Cases 247).

The net result is that there is no bar to convict a person in the absence of corroboration solely on the testimony of the prosecutrix if it inspires confidence. Therefore, the testimony of the prosecutrix has to approached in view of the above settled principles of law. On the close scrutiny of her evidence, we are constrained to note that the testimony of the prosecutrix does not inspire confidence firstly for the reason that in the FIR she has stated that she was in her room when Raj Kumar respondent came there but as PW12 she has stated that the respondents had entered the kitchen where she was working and secondly, there is no reference of Darshan respondent in FIR and no role has been assigned to him therein whereas, in the Court she has stated that when respondent Raj Kumar entered her house, Darshan bolted the door of the house/kitchen from outside, thirdly, she did not say anything about tearing of her trouser by the respondent Raj Kumar in the FIR whereas, in the Court she has deposed that he had torn off her salwar and the string. Further, according to her, he had also caused injury on her chest and face with his teeth and

committed sexual intercourse with her forcibly but these allegations are not corroborated on her medical examination. In the FIR it is stated by her that her brother, on return from the field, un-bolted the door and the respondent Raj Kumar fled away from the place and jumped from the verandah but in her statement before the Court, she did not say anything about it. According to her, after finishing of the illegal act by Raj Kumar, he took 2/3 minutes and in the meanwhile, her brother came inside the room, at that time the respondent was closing the buttons of his pant, thereafter he went to the upper storey from where he jumped. When her salwar was exhibited before the Court, it was not torn off nor was its string broken.

She deposed before the Court that the injuries on her face were alleged to have been shown to the Doctor at the time of examination but none of the injuries, as aforesaid, have been depicted in her medico legal certificate referred to above. Next, she had stated that when her brother came there, she was naked but this fact was not corroborated by her brother Raju when examined as PW1. Next according to her, when the respondent Raj Kumar away on the "Bohri" and jumped over into the verandah, her brother had caught hold of him but he was not given any beating and then it is not understood how the respondents sustained as many as six injuries on her person including the fracture of his ankle in his MLC Exhibit D1 issued on 11.4.1988. When he was arrested on

16.4.1988, he was also got medically examined by the Police. His M.L.C. us Exhibit PW2/B. Few of old injuries were also seen on that day by the Doctor and the fracture of ankle was also confirmed in Exhibit PW11/A. His MLC Exhibit D1 which was issued by the same Doctor gives the history of being obtained by some one and it is the case of the said respondent that he was given beatings by the brother of the prosecutrix and other villagers. The prosecutrix next deposed that salwar was soiled with blood and siemens but this fact is not substantiated by the medico legal evidence and also the report of the chemical analyst Exhibit PX. Further, the prosecutrix has stated that her statement made in the Court was correct and her earlier statement on the basis of which First Information Report was lodged was incorrect. She was also confronted with the FIR but according to her, her earlier statement on the basis of which FIR was recorded is not correct whereas, the statement given in the Court was correct. She has admitted that Darshan had called villagers at the spot and her father had brought the Pradhan and other persons to the house and thereafter she accompanied her father to the Police station to lodge the report on the same day and she was also examined by the Police on that very day which goes contrary to the dates given in the F.I.R. and the Medico Legal Certificate. She denied that her brother owned any money to the respondent and also denied the fact that both of them had given beatings to the respondents on demanding the money. Her brother Raj

Kumar was also examined as PW13. According to him, he saw Darshan Kumar respondent close to the pillars of his house and gave call to caution Raj Kumar that some one was coming and he ran away from the spot and further, on opening the door, he saw Raj Kumar buttoning up his pant. Accused went above the verandah and from there he jumped to the first floor and sustained sprain on his ankle, then he was apprehended and made to sit there. His father called the Pradhan and ten to fifteen persons gathered there. Darshan Lal also brought about fifteen persons there. He and prosecutrix were brought to Kotla Bazar. On the way, his father and Pradhan Gram Panchayat met. Raj Kumar beg pardon before the Panchayat and on the following day, the matter was reported to the Police. He was also confronted with his statement recorded under Section 161 of the Code of Criminal Procedure on the material points that Darshan Lal had brought some persons whereas it is not so recorded therein. He had denied that he having been advance rupees 500/- by respondent Raj Kumar and he also denied that he had come to demand the money in his house and as a counter blast, this case was registered against respondent Raj Kumar. Roshan Lal (PW3) father of the prosecutrix has stated that on the date of the incident, younger sister of the prosecutrix had gone to graze the cattle and his son was harvesting the wheat crop in the fields whereas he returned back to his house and at that time, he found the prosecutrix weeping and she narrated the whole

story to him. Raj Kumar was apprehended by his son as well as some other persons. Pradhan was called on the same day and the report could not be lodged due to darkness. Pradhan Uttam Chand was not examined whereas, Chhaju Ram Member of the Panchayat (PW5) has stated that the respondent had wrongly teased the prosecutrix as Raj Kumar had also stated that he was given beatings by Roshan Lal and his family members and he was also complaining pain in his ankle saying that he was given beatings by the family members of Roshan Lal.

There is also a representation dated 20.3.1986 much earlier to the alleged incident of the Pradhan Gram panchayat Gullardhar Exhibit DA against respondent Raj Kumar to the Deputy Commissioner whereby the Panchayat had complained to the Collector regarding the favoritism.

Further, on the scrutiny of the evidence of the prosecutrix, it is not proved that at the relevant time, the prosecutrix was minor. She had closed her age as seventeen years when she was examined by the Doctor on 11.4.1988 which stands duly recorded in M.L.C. Exhibit PW1/B. According to her, she is illiterate but the School Leaving Certificate Exhibit pW6/A shows her age as 12.7.1973, i.e, more than eighteen years. She had disclosed her age as nineteen years on 23.7.1991 when she was examined. She was also referred for the radiological examination to ascertain her age but there is no evidence of the radiologist on this point regarding

ascertaining the age of the prosecutrix. In view of this conflicting evidence, it cannot be said that the prosecutrix was minor. In any event, she is proved to be more than eighteen years of age at the time of alleged incident.

On the appraisal of the evidence aforesaid, we are of the considered opinion that the prosecution has failed to prove the case against the respondents for the offences charged against them beyond reasonable doubt. The statement of the prosecutrix does not inspire any confidence to make the basis for conviction of the respondents. The criminal house tress pass in the absence of mensrea as alleged is not proved. Therefore, we hold that the view taken by the learned trial Court is plausible, reasonable and is born out from the record.

We are unable to circumscribe to the view as the learned Additional Advocate General wants us to take on the ground that the other views pointing out towards the guilt of the accused is also possible from the record. It is settled law that in a case of appeal against acquittal, the innocence of the accused is not diluted and where there are two views deducible from the evidence on record, the view favourable to the accused is to be taken. As already held that the view which has been taken by the learned Sessions Judge is possible from the evidence on record, there it is not a case for worth interference with the judgment recorded by learned Sessions Judge. Accordingly, the appeal is dismissed. The respondents are discharged of the bail bonds entered upon them at any

stage during the proceedings of this case. The matter of accordingly disposed of.

(Surjit Singh)
Judge.

(Surinder Singh)
Judge.

August 21 , 2007.
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